

Message Text

LIMITED OFFICIAL USE

PAGE 01 BONN 18768 171901Z

64

ACTION SCS-03

INFO OCT-01 EUR-12 ISO-00 L-03 JUSE-00 SCA-01 EB-07

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FM AMEMBASSY BONN

TO AMCONSUL STUTTGART

INFO SECSTATE WASHDC 4450

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E.O. 11652: N/A

TAGS: CASC (MEMOREX VS IBM), GW

SUBJECT: DEPOSITION IN TREBLE DAMAGE CORPORATE
LITIGATION

REFS: (A) STUTTGART 1239

(B) STUTTGART 1237

1. ON BASIS OF PRICE-PFUND TELCON BEFORE RECEIPT OF
REFTEL (A), EMBOFF SPOKE WITH REP OF FRG ECONOMICS
MINISTRY (STAHL) WHO WAS FAMILIAR WITH ROLE OF KARTTE
OF HIS MINISTRY CONCERNING THE SUBJECT CASE. STAHL
EMPHASIZED THAT ECONOMICS MINISTRY WAS NOT IN A
POSITION TO GRANT AUTHORITY FOR TAKING OF DEPOSITIONS
OR FOR INSIGHT BY REPS OF PLAINTIFFS INTO DOCUMENTS
OF DEFENDANT IBM LOCATED IN FRG. FEDERAL GOVERNMENT
APPROVAL COULD ONLY BE OBTAINED AFTER FORMAL REQUEST
MADE THROUGH DIPLOMATIC CHANNELS AND WITH INVOLVEMENT
OF JUSTICE MINISTRY AND FOREIGN OFFICE. ABSENCE OF
US-FRG JUDICIAL ASSISTANCE TREATY COULD MAKE FORMAL
APPROVAL DIFFICULT IF NOT IMPOSSIBLE.

2. STAHL SAID THAT KARTTE'S TELEX SHOULD BE UNDERSTOOD
TO MEAN THAT, PROVIDED IBM ON VOLUNTARY BASIS WAS
WILLING TO PERMIT PLAINTIFFS' REPRESENTATIVES TO HAVE
INSIGHT INTO IBM DOCUMENTS IN FRG AND TO OBTAIN
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STATEMENTS FROM IBM OFFICERS FOR USE IN US LITIGATION,

FEDERAL GOVERNMENT WOULD NOT NEED OFFICIALLY TO BE INVOLVED, AND DOCUMENT PRODUCTION COULD TAKE PLACE ANYWHERE. HOWEVER, VOLUNTARY NATURE OF PROVISION OF STATEMENTS AND DOCUMENTS SHOULD BE CLEAR IN US COURT PROCEEDINGS. IT SHOULD BE CLEAR, AS WELL, THAT IBM GERMANY WAS NOT OPERATING UNDER ANY LEGAL REQUIREMENT EFFECTIVE ON IT WITHIN FRG BY REASON OF US LAW OR ACTION OF JUDGE OR COURT IN THIS CASE.

3. STAHL SAID THAT GIVEN ABOVE CIRCUMSTANCES DIFFICULTY COULD PROBABLY ARISE ONLY IF ONE OF THE PARTIES TO THE LITIGATION WERE TO COMPLAIN TO US COURT OR FRG AUTHORITIES -- EITHER PLAINTIFFS THAT DEFENDANT WAS NOT SUFFICIENTLY FORTHCOMING WITH STATEMENTS OR DOCUMENTS, OR DEFENDANT THAT IT WAS PUT UNDER IMPROPER PRESSURE TO PROVIDE STATEMENTS OR INSIGHT INTO DOCUMENTS.

4. IN ORDER TO PRECLUDE MISUNDERSTANDING CONCERNING THESE ACTIONS, EITHER NOW OR IN THE FUTURE, CONGEN MAY WISH TO REQUEST OR REQUIRE THAT REPS OF PARTIES, IN DOCUMENT SIGNED BY THEM AND AVAILABLE FOR POSSIBLE USE IN US COURT, RECORD THEIR UNDERSTANDING THAT IN FRG STATEMENTS BY IBM OFFICIALS AND PRODUCTION OF IBM DOCUMENTS WERE AUTHORIZED AND PROVIDED BY IBM ON ENTIRELY VOLUNTARY BASIS AND NOT PURSUANT TO US LAWS OR US FEDERAL JUDGE'S ACTION AND NOT IN RELIANCE ON ANY FRG GOVERNMENT AUTHORIZATION. IF PARTIES DO NOT SIGN SUCH DOCUMENT, EMBASSY SUGGESTS THAT STAHL'S CLARIFICATION BE BROUGHT TO ATTENTION OF REPS OF LITIGANTS AND THAT FACT THAT THIS WAS DONE BE APPROPRIATELY RECORDED BY CONGEN.
HILLENBRAND

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